

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ORIGINAL
JUN 7 1992
CHIEF CLERK'S OFFICE

MENARD ELECTRIC COOPERATIVE,)

Complainant,)

vs)

No. 01-0443

AMERENCIPS dba CENTRAL ILLINOIS)

PUBLIC SERVICE COMPANY,)

Respondent.)

AMENDED
COMPLAINT

MENARD ELECTRIC COOPERATIVE, Complainant, (Menard), by GROSBOLL, BECKER, TICE & REIF, complaining of AMERENCIPS dba CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, Respondent, (CIPS) pursuant to the Illinois Electric Supplier Act, 220 ILCS 30/1 et seq, states as follows:

COUNT I

Menard, complaining of CIPS pursuant to Section 5 of the Electric Supplier Act (ESA), states as follows:

1. Menard is an Illinois Not-For-Profit Corporation engaged in the furnishing and distribution of electrical energy in the State of Illinois including Cass County, Illinois.
2. The Respondent, CIPS, is a public utility as defined in Section 3-105 of "An Act Concerning Public Utilities", 220 ILCS 5/3-105 and is engaged in the furnishing and distribution of electrical energy in Illinois, including Cass County, Illinois.
3. Both Menard and CIPS are electric suppliers as defined by Section 3.5 of the ESA.

4. On July 2, 1965, and for many years prior thereto, Menard provided electric service to the premises of Pat Lathom (Lathom Premises), generally described as follows:

The East Half of the Southeast Quarter; and the East Half of the Northeast Quarter, Section 33, Township 17 North, Range 8 West, 3rd P.M., Cass County, Illinois.

A copy of the plat showing the location of such Lathom Premises is attached hereto as Exhibit 1 and by reference incorporated herein.

5. Pursuant to the provisions of Section 5 of the ESA, Menard is entitled to provide electric service to all customers on the premises hereinbefore described.

6. A subdivision known as Country Estates Addition to the Village of Ashland, being a subdivision of part of the East Half of the Northeast Quarter of Section 33, Township 17 North, Range 8 West of the 3rd P.M., Cass County, Illinois (Country Estates), has been or is being established on the Lathom Premises as shown on Exhibit 1 and as shown on a plat of such Country Estates Subdivision attached as Exhibit 2 and by reference incorporated herein.

7. Menard, on information and belief, states that the Country Estates Subdivision was annexed to the Village of Ashland, on or about August 11, 1999.

8. On or about March 2001, Lot 13 of Country Estates Subdivision, was transferred to Harold Jurgens and Sandra B. Jurgens, husband and wife.

9. Menard, on information and belief, states that CIPS has or is about to provide electric service to Lot 13 of Country Estates Subdivision.

10. Menard has the absolute right to serve Lot 13 of Country Estates Subdivision and all of the Country Estates Subdivision for the reason that the same is located on the foregoing described Lathom Premises which Menard was serving on July 2, 1965.

11. CIPS does not have or otherwise possess the right to serve Lot 13 of Country

Estates Subdivision or any part of the Lathom Premises and any action by CIPS to so provide service will be in derogation of the absolute rights of Menard to provide such electric service pursuant to Section 5 of the ESA.

WHEREFORE, Complainant, Menard, requests that the Commission grant the following relief:

- A. Give notice of the filing of this Complaint to the Respondent herein and set this matter for hearing to provide both temporary and permanent relief to Menard;
- B. To enter a temporary and permanent order providing that Menard shall provide electrical service to Lot 13 of Country Estates Subdivision and all of such Subdivision;
- C. To enter a temporary and permanent order prohibiting CIPS from providing electrical service in the territory designated by the ESA to be served by Menard and specifically Lot 13 of Country Estate Subdivision and all of such Subdivision;
- D. For such other and further relief as the Commission may deem just and proper.

COUNT II

For an additional and alternative complaint by Complainant Menard against CIPS, pursuant to Section 8 of the ESA, Menard alleges as follows:

1-9. Menard realleges Paragraph 1 through 9 of County I of this Complaint as and for Paragraph 1 through 9 of County II of this Complaint.

10. In the event that the Commission is unable to determine the dispute herein, pursuant to Section 5 of the ESA, Menard is entitled to provide the electrical service to Lot 13 of Country Estate Subdivision and all of such Subdivision.

11. The electrical distribution lines of Menard are adequate to provide such service

and Menard states upon information and belief that Menard's lines as they existed on July 2, 1965 are closer in proximity to Lot 13 Country Estates Subdivision and Lots 1 through 6; 13 through 18; and 19 through 24 within Country Estates Subdivision, than the electrical distribution lines of CIPS.

12. Menard provided electrical service in this area long before CIPS provided any electrical service and thus, Menard was first furnishing service in the area.

13. Menard has assisted in creating the demand for service in the area.

14. As between Menard and CIPS, Menard can provide such service with the smaller amount of additional investment.

WHEREFORE, Complainant, Menard, requests that the Commission grant the following relief:

A. Give notice of the filing of this Complaint to the Respondent herein and set this matter for hearing to provide both temporary and permanent relief to Menard;

B. To enter a temporary and permanent order providing that Menard shall provide electric service to Lot 13, Country Estates Subdivision and such other lots as are determined by the Commission to be closer in proximity to Menard's July 2, 1965 lines;

C. To enter a temporary and permanent order prohibiting CIPS from providing electric service to Lot 13, Country Estates Subdivision and such other lots therein as are determined by the Commission to be closer in proximity to Menard's July 2, 1965 lines;

D. For such other and further relief as the Commission may deem just and proper.

COUNT III

Menard, complaining in the alternative of CIPS pursuant to Section 14(i) of the Electric Supplier Act 220 ILCS 30/14 (ESA), states as follows:

1. Menard is an Illinois Not-For-Profit Corporation engaged in the furnishing and distribution of electrical energy in the State of Illinois including Cass County, Illinois.
2. The Respondent, CIPS, is a public utility as defined in Section 3-105 of "An Act Concerning Public Utilities", 220 ILCS 5/3-105 and is engaged in the furnishing and distribution of electrical energy in Illinois, including Cass County, Illinois.
3. Both Menard and CIPS are electric suppliers as defined by Section 3.5 of the ESA.
4. On July 2, 1965, and for many years prior thereto, Menard provided electric service to the premises of Pat Lathom (Lathom Premises), generally described as follows:

The East Half of the Southeast Quarter; and the East Half of the Northeast Quarter,

Section 33, Township 17 North, Range 8 West, 3rd P.M., Cass County, Illinois.

A copy of the plat showing the location of such Lathom Premises is attached hereto as Exhibit 1 and by reference incorporated herein.
5. Pursuant to the provisions of Section 5 of the ESA, Menard is entitled to provide electric service to all customers on the premises hereinbefore described.
6. A subdivision known as Country Estates Addition to the Village of Ashland, being a subdivision of part of the East Half of the Northeast Quarter of Section 33, Township 17 North, Range 8 West of the 3rd P.M., Cass County, Illinois (Country Estates), has been or is being established on the Lathom Premises as shown on Exhibit 1 and as shown on a plat of such Country Estates Subdivision attached as Exhibit 2 and by reference incorporated herein.
7. Menard, on information and belief, states that the Country Estates Subdivision was

annexed to the Village of Ashland, on or about August 11, 1999.

8. Menard did not, at the time of such alleged annexation, possess authority from the Village of Ashland to utilize the public ways and streets of the Village of Ashland. CIPS has represented to Menard that CIPS possessed, at the time of such alleged annexation, authority from the Village of Ashland for the use of its public streets and ways for providing electric service.

9. On or about March 2001, Lot 13 of Country Estates Subdivision, was transferred to Harold Jurgens and Sandra B. Jurgens, husband and wife.

10. Menard, on information and belief, states that CIPS has or is about to provide electric service to Lot 13 of Country Estates Subdivision.

11. Pursuant to Section 14 of the Act, an electric supplier such as Menard, which is serving in an area which becomes annexed to or otherwise located within an incorporated municipality after the adoption of the Act, may continue to furnish service within the annexed or otherwise incorporated area to the premises which Menard was serving at the time at such annexation. Menard was serving the annexed premises at the time of such annexation, since the annexed premises is a portion of the Lathom premises which Menard provided electric to on July 2, 1965 being the effective date of the Act. The Country Estates Addition to the Village of Ashland known as the Country Estates Subdivision as identified on the attached Exhibit 2 and by reference incorporated herein, is a part of the Lathom premises to which Menard was providing electric service on July 2, 1965 and as such, Menard is entitled to continue to provide electric service to such premises pursuant to Section 14.

12. Pursuant to Section 14(i) of the Act, Menard is entitled to extend its lines located within the Lathom premises in that portion of the Country Estates Subdivision premises

annexed to the Village of Ashland even though CIPS may have authority from the Village of Ashland to utilize the streets and public ways of the Village of Ashland, provided that Menard (a) obtains authority from the Commission to serve the area; and (b) obtains authority from the Village of Ashland for the use of the public streets and ways of the Village of Ashland. By this Complaint, Menard seeks authority from the Commission to serve the annexed area known as Country Estates Subdivision

13. Should the commission grant Menard authority to serve the Country Estates Subdivision, Menard will thereafter seek authority from the Village of Ashland for the right to use the streets and public ways of the Village of Ashland to provide electric service to the Country Estates Subdivision premises. Accordingly, Menard, by this Complaint, hereby requests authority from the Commission for providing electric service to the Country Estates Subdivision premises.

14. In making such determination, Section 14(i) of the Act provides that the Commission shall consider all of the factors set forth in Section 8 of the Act.

15. The action taken by CIPS herein to provide electric service to Country Estates Subdivision premises has deprived Menard of its right to provide electric service to such premises which Menard otherwise has a right to provide and has caused duplication of facilities and decreased efficiency in providing electric service in violation of the Act.

WHEREFORE, Complainant Menard requests the Commission grant the following relief:

A. Give notice of the filing of this Complaint to the Respondent herein and set this matter for hearing to provide both temporary and permanent relief to Menard;

B. To enter a temporary and permanent order providing that Menard shall provide

electric service to Lot 13, Country Estates Subdivision and such other lots of the subdivision upon obtaining authority to use the streets and public ways of the Village of Ashland;

C. To enter a temporary and permanent order prohibiting CIPS from providing electric service to Lot 13, Country Estates Subdivision and such other lots therein;

D. For such other and further relief as the Commission may deem just and proper.

COUNT IV

Menard, complaining in the alternative of CIPS pursuant to Section 14(iii) of the Electric Supplier Act 220 ILCS 30/14 (ESA), states as follows:

1. Menard is an Illinois Not-For-Profit Corporation engaged in the furnishing and distribution of electrical energy in the State of Illinois including Cass County, Illinois.

2. The Respondent, CIPS, is a public utility as defined in Section 3-105 of "An Act Concerning Public Utilities", 220 ILCS 5/3-105 and is engaged in the furnishing and distribution of electrical energy in Illinois, including Cass County, Illinois.

3. Both Menard and CIPS are electric suppliers as defined by Section 3.5 of the ESA.

4. On July 2, 1965, and for many years prior thereto, Menard provided electric service to the premises of Pat Lathom (Lathom Premises), generally described as follows:

The East Half of the Southeast Quarter; and the East Half of the Northeast Quarter,

Section 33, Township 17 North, Range 8 West, 3rd P.M., Cass County, Illinois.

A copy of the plat showing the location of such Lathom Premises is attached hereto as Exhibit 1 and by reference incorporated herein.

5. Pursuant to the provisions of Section 5 of the ESA, Menard is entitled to provide electric service to all customers on the premises hereinbefore described.

6. A subdivision known as Country Estates Addition to the Village of Ashland, being a subdivision of part of the East Half of the Northeast Quarter of Section 33, Township 17 North, Range 8 West of the 3rd P.M., Cass County, Illinois (Country Estates), has been or is being established on the Lathom Premises as shown on Exhibit 1 and as shown on a plat of such Country Estates Subdivision attached as Exhibit 2 and by reference incorporated herein.

7. Menard, on information and belief, states that the Country Estates Subdivision was annexed to the Village of Ashland, on or about August 11, 1999.

8. Menard did not, at the time if such alleged annexation, possess authority from the Village of Ashland to utilize the public ways and streets of the Village of Ashland. CIPS has represented to Menard that CIPS possessed, at the time of such alleged annexation, authority from the Village of Ashland for the use of its public streets and ways for providing electric service.

9. On or about March 2001, Lot 13 of Country Estates Subdivision, was transferred to *Harold Jurgens and Sandra B. Jurgens, husband and wife.*

10. Menard, on information and belief, states that CIPS has or is about to provide electric service to Lot 13 of Country Estates Subdivision.

11. Pursuant to Section 14 of the Act, an electric supplier such as Menard, which is serving in an area which becomes annexed to or otherwise located within an incorporated municipality after the adoption of the Act, may continue to furnish service within the annexed or otherwise incorporated area to the premises which Menard was serving at the time of such annexation. Menard was serving the annexed premises at the time of such annexation, since the annexed premises is a portion of the Lathom premises which Menard provided electric service to on July 2, 1965 being the effective date of the Act. The Country Estates Addition

to the Village of Ashland known as the Country Estates Subdivision as identified on the attached Exhibit 2 and by reference incorporated herein, is a part of the Lathom premises to which Menard was providing electric service on July 2, 1965 and as such, Menard is entitled to continue to provide electric service to such premises pursuant to Section 14.

12. Pursuant to Section 14(iii) of the Act, Menard is entitled to extend its lines located within the Lathom premises in that portion of the Country Estates Subdivision premises annexed to the Village of Ashland even though CIPS may have authority from the Village of Ashland to utilize the streets and public ways of the Village of Ashland, provided that Menard obtains authority from the Village of Ashland for the use of the public streets and ways of the Village of Ashland. By this Complaint, Menard seeks a determination from the Commission that Menard was serving the area comprising the Lathom premises at the time of annexation of Country Estates Subdivision and is authorized to serve the annexed area known as Country Estates Subdivision provided Menard obtains authority from the Village of Ashland for the right to use the street and public ways of the Village of Ashland to provide electric service to the Country Estates Subdivision premises.

13. In making such determination, Section 14(iii) of the Act provides that the Commission shall consider whether Menard was serving in an area which has been annexed to the Village of Ashland and if so, determine that Menard may continue to serve in the annexed area and may furnish service to additional premises in the annexed area subject to obtaining authority from the Village of Ashland to use the streets and public ways of the Village of Ashland..

14. The action taken by CIPS herein to provide electric service to Country Estates Subdivision premises has deprived Menard of its right to provide electric service to such

premises which Menard otherwise has a right to provide and has caused duplication of facilities and decreased efficiency in providing electric service in violation of the Act.

WHEREFORE, Complainant Menard requests the Commission grant the following relief:

A. Give notice of the filing of this Complaint to the Respondent herein and set this matter for hearing to provide both temporary and permanent relief to Menard;

B. To enter a temporary and permanent order providing that Menard was serving in an area which has been annexed to the Village of Ashland and shall provide electric service to Lot 13, Country Estates Subdivision and such other lots of the subdivision upon obtaining authority to use the streets and public ways of the Village of Ashland;

C. To enter a temporary and permanent order prohibiting CIPS from providing electric service to Lot 13, Country Estates Subdivision and such other lots therein;

D. For such other and further relief as the Commission may deem just and proper.

MENARD ELECTRIC COOPERATIVE


By



Lynn Frasco, P.E. and Manager

STATE OF ILLINOIS)
 : SS
COUNTY OF MENARD)

LYNN FRASCO, being first duly sworn upon his oath, deposes and states that he is the Manager of Menard Electric Cooperative in the above entitled cause of action, that he has read the above and foregoing Complaint by him subscribed and that the same is true in substance and in fact except as to those matters which are stated to be on information and belief and as to those matters he believes them to be true.



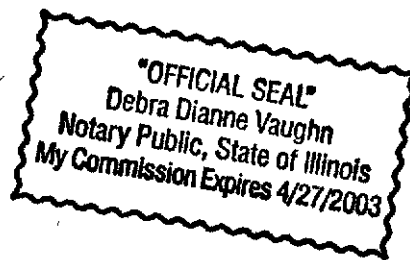
Lynn Frasco

Subscribed and Sworn to before me

this 6th day of June, 2002.



Notary Public



GROSBOLL, BECKER, TICE & REIF
Attorney Jerry Tice
101 East Douglas Street
Petersburg, Illinois 62675
Telephone: 217/632-2282

PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 6th day of June, 2002, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to the following persons at the addresses set opposite their names:

Scott Helmholz
Sorling, Northrup, Hanna, Cullen
& Cochran Ltd
Suite 800 Ill Bldg.
P.O. Box 5131
Springfield, IL 62705

William Showtis
Hearing Examiner
Illinois Commerce Commission
527 E. Capitol
Springfield, IL 62701-1827

